IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Ex.FA.No. 20 of 2006()

OS.968/1999 of II ADDL.SUB COURT,THRISSUR
.....

: APPELLANT

ASOKAN, AGED 46,
S/O.PULIPARAMBIL VELAYUDHAN, AVINISSERY VILLAGE,
AVINISSERY DESOM, THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SMT.S.AMINA

RESPONDENTS:
---

1. P.G.SHEENA, W/O.POTTEKKATTU SAJEEVAN,
ARIMBOOR VILLAGE, DESOM, THRISSUR TALUK.

2. VINCENT, S/O.ELUVATHINGAL ANTONY,
CHITTILAPPILLY DESOM, CHITTILAPPILLY VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.V.V.ASOKAN
SRI.M.I.MAYANKUTTY

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON 19.6.2007 DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

**- - - -

the judgment debtor was given a further chance to wipe off the decree by paying the amount with subsequent interest and cost within a period of six months from the date of judgment of this court. The operative portion of the judgment reads as follows:

> "In case the appellant deposits the entire amount of Rs.2,30,822/- with the subsequent interest at 6 percent and cost within six months from today the sale effected shall stand set aside. It is also made clear that in case the amount is not deposited the order under challenge will become final and the auction purchaser will be entitled to take delivery of the property."

It is admitted that the judgment debtor could not deposit the amount within the stipulated time and the first respondent herein filed application for delivery of the scheduled property. It is at this stage the appellant approached the court below with a petition described as a claim petition.

4. The appellant claims the property on the basis of an agreement for sale said to have been executed between him and the judgment debtor on 17.9.1998. It is stated in the application that consideration for the sale of the property was Rs.6 lakhs, out of which Rs.1 lakh has been paid already. It is also stated that at the time of execution of the agreement, there was a liability by way of a mortgage with the Kerala State Housing Board which had to be cleared by the judgment debtor within a period of 11 months. It is also stated in the affidavit that the judgment debtor could not clear the debt due to the Housing Board within the said period and at his request the

appellant paid a further amount of Rs.1 lakh on 10.8.1999 and the period of agreement was extended from time to time. It is also stated that the appellant was given the right to enjoy the improvements in the property. This is the sum and substance of the claim raised by the appellant in the affidavit. According to him, he was not aware of the proceedings pending before the civil court and hence the claim petition was filed.

5. No evidence was adduced by the appellant in support of the claim. The agreement relied upon has also not been produced and no oral evidence was adduced by him. The court below took the view that the claim petition is seen filed colluding with the judgment debtor and that the appellant has no right over the property and therefore he has no right to seek the sale set aside and raise the attachment.

6. The counsel for the appellant argued that pursuant to the agreement for sale, he is in possession of the property and if property is delivered, it will cause undue hardship to him. His contention is that the court below has not approached the issue in the right perspective and should have allowed the claim petition as the agreement for sale is prior to the date of suit itself. These contentions were stoutly opposed by the counsel for the respondents who pointed out that the alleged claim is not sustainable in law and that absolutely no evidence has been adduced by the appellant in support of the claim and at any rate, it is filed in collusion with the judgment debtor. He also pointed out that in spite of the judgment in

F.A.O. No.171/2005, the judgment debtor did not avail the opportunity given by this court to wipe off the decree amount as directed in the judgment and that the claim petition filed by the appellant is filed after the period prescribed in the judgment in F.A.O. No.171/2005 was over. It is therefore contended that there is clear collusion between the judgment debtor and the appellant and according to him, the alleged agreement is a fabricated one.

7. The appellant is claiming right over the property based on an agreement for sale. It is well settled that an agreement for sale does not, of itself, create any interest in or charge on the immovable property, going by Section 54 of the Transfer of Property Act. Apart from that, the appellant did not adduce any evidence in support of the claim and the alleged agreement for sale. No evidence to prove payment of amounts to the judgment debtor towards sale consideration has been adduced. He did not enter the box also to depose about the details. Therefore, there is absolutely no evidence worth in support of the case pleaded by the appellant to sustain the claim.

8. The circumstances as revealing from the entire spectrum will show that this claim petition is filed only to get over the judgment in F.A.O.No.171/2005. It cannot be believed that the appellant who claims to be in possession of the property, was not aware about the proceedings in the case. Apart from that, the alleged agreement is dated 17.9.1998 and the

original suit filed by the first respondent is later in point of time. The claimant has no case that he had taken any steps to seek specific performance of the agreement. He had not approached the civil court to get a decree seeking specific performance of the agreement. Hence, it is evident that the alleged claim is a belated one and is lacking in bonafides also. In the affidavit, there are no details as to when he came to know about the proceedings in execution of the decree in O.S. No.968/1999 apart from a vague averment that he came to know about the same from one Sunny, S/o. Lonappan. That person is also not examined as a witness. The non mentioning of the details including the date of knowledge is conspicuous. Thus, it is a case where the claimant has set up a right to the immovable property and has miserably failed to adduce any evidence oral and documentary in support of it. Hence, the order passed by the court below is perfectly justified.

In the above circumstances, there is no merit in the appeal and the same is dismissed. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/